

**State of New Hampshire
Board of Medicine
Concord, New Hampshire 03301**

In the Matter of:
Fathi El-Kurd, M.D.
No.: 5793
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine ("Board") and Fathi El-Kurd, M.D. ("Dr. El-Kurd" or "Respondent"), a physician licensed by the Board, do hereby stipulate and agree to resolve certain disputed allegations of professional misconduct (i.e. alleged pattern of practicing medicine outside of his scope of expertise in surgery) which are now pending before the Board, according to the following terms and conditions:

1. Pursuant to RSA 329:17, I, 329:18, and 329:18-a, and Medical Administrative Rule ("Med") 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians.
 2. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
 3. Pursuant to RSA 329:17 III-a, "[t]he board shall conduct an investigation of any person licensed by the board who has had 3 reservable claims, written complaints, or actions for medical injury ... which pertain to 3 different acts or events within any consecutive 5-year period." (emphasis supplied)
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4. This *Settlement Agreement* resolves issues raised during an investigation by the Board into three claims or complaints within the past five years. The receipt of a third complaint initiated the review of the previous two claims.
5. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on August 4, 1977. Respondent holds license number 5793. Respondent has maintained a general and vascular surgery practice since 1981 at 306 Riverway Place, Bedford, New Hampshire, 03110-6749. He is Board Certified in surgery (successfully recertified through 2010) by the American Board of Surgeons. He has been elected (twice) as Chairman of the Department of Surgery at Catholic Medical Center in Manchester, New Hampshire.
6. On or between 1986 and 1999, in addition to his surgical practice, Respondent assumed the case load of his former colleague. During this time, Respondent maintained a second practice at 24 Pinkerton Street in Derry, New Hampshire, where his practice encompassed a limited number of primary care medicine patients.
7. In February of 2004, the Board received a complaint against Respondent from Patient ES. The Board initiated an investigation into the complaint. In compliance with RSA 329:17, III-a, the Board subsequently conducted a review of two matters it had previously investigated.
8. The review of the three matters revealed a “pattern of conduct” that Respondent’s practice of medicine had fallen below the standard of care when he practiced outside the scope of his specialty in surgery. The three cases reviewed involved facts as set forth below:

- (a) Patient ES sent a complaint to the Board on February 24, 2004. A review of the patient record revealed Respondent's appropriate diagnosis and treatment of vascular issues. A review of the patient record failed to document adequate evaluation and diagnostic testing of Patient ES in order to support a diagnosis of diabetic neuropathy prior to the patient's referral to a specialist.
 - (b) The Board received an insurance notice relating to Respondent's treatment of Patient RG. Respondent acted as Patient RG's primary care physician on or between 1992 and 1999. A review of the record revealed a concern about Respondent's management of RG's diabetes and hypertension over time, and the adequacy of the evaluation he performed in 1999 of Patient RG's gastrointestinal complaint.
 - (c) The Board received notice of a lawsuit filed in 2003 relating to Respondent's surgical intervention in the treatment of a "Baker's cyst" in Patient LW. After review of the patient file, Respondent was informed that "Baker's cysts" are most commonly treated conservatively without surgical intervention.
9. Dr. El-Kurd asserts that his care of each of his patients has been within the standard of care, but concedes an adverse outcome with Patient LW likely would have been avoided if he continued conservative management of the complaint. Respondent disputes whether his management of Patient RG's hypertension, diabetes issues or emergent gastrointestinal complaints caused or contributed to the injury suffered by Patient RG when he sought treatment at Parkland Medical

Center. Respondent concedes that differing management approaches of these complaints might have been appropriate. Respondent also asserts that he suspected that Patient ES suffered from a diabetic condition. Respondent advised Patient ES of his suspicion and immediately arranged for a referral to an appropriate specialist. Respondent ordered a standard chemical profile of Patient ES and concedes that he offered Patient ES a diagnosis of diabetic neuropathy without conducting a complete neurological examination.

10. Respondent stipulates that if a disciplinary hearing were to take place, Hearing Counsel would present evidence of this conduct and the Board would make a finding of misconduct by violation of RSA 329:17, VI (c), (d) and (k). Respondent agrees that the Board hereby makes such a finding.
11. In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, and acknowledging the authority of the Board in this regard, Respondent consents to the following action by the Board, pursuant to RSA 329:17, I-a and VII:
 - A. Respondent agrees that his practice shall be limited to his specialties of general and vascular surgery;
 - B. Respondent agrees to maintain a list of all patients seen on a weekly basis to include the following information: patient name, address, principal complaint and disposition (i.e., what treatment was rendered/referral and to whom). Respondent shall provide a copy of this list to the Board on a monthly basis for one year, commencing after issuance of this *Settlement Agreement* by the Board. This list shall be available for review by the

Board or its investigator without prior notification to Respondent in order to confirm compliance with the practice restrictions.

- C. Respondent agrees, at his own expense and in addition to other continuing medical education ("CME") hours required for licensure, to attend one of the following courses addressing surgical issues:
- a. General Surgery 2006, 28th Annual Post Graduate Course at University of California, Davis, Medical Center in Sacramento, California, scheduled for November 16 and 17, 2006; or
 - b. The Post Graduate Course in General Surgery at the University of California, San Francisco, California, schedule for March 22 through 24, 2007; or
 - c. The 15th Annual Refresher Court and Update in General Surgery in St. Louis, Missouri, scheduled for November 22 through 24, 2007.

Respondent agrees to provide the Board with documentation of completion of one of these courses within thirty (30) days of completion.

- D. Respondent agrees that if the Board is informed of an instance where he has treated a patient with a non-surgical need or a circumstance where he fails to properly refer such a patient, the Board may summarily order, without further hearing, a penalty of a fine and mandate his global assessment at the Center for Personalized Education for Physicians ("CPEP") as license restrictions.
- E. Within thirty (30) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physician or work which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any

agency or authority which licenses, certifies or credentials physicians, with which Respondent is presently affiliated.

- F. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a physician or for work in any capacity which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physicians, to which Respondent may apply for any such professional privileges or recognition.
12. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
13. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described or underlying this settlement.
14. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above. However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate

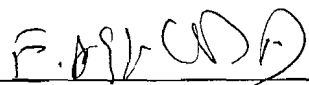
discipline should any further misconduct be proven against Respondent in the future.

15. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
16. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
17. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
18. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
19. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
20. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.
21. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

22. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understand that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights (contingent upon Board final approval of the settlement) as they pertain to the allegations described herein.
23. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: 10-5-06



Fathi A. El-Kurd, M.D.
Respondent

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 11/3/06

Penny Taylor
(Signature)

PENNY TAYLOR
(Print or Type Name)

Authorized Representative of the
NH Board of Medicine

/* Board Members recused:

Kevin Costin, P.H.

JAMES SISE, M.D.

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